

LAW OFFICES OF
JEFFREY LICHTMAN
11 EAST 44TH STREET
SUITE 501
NEW YORK, NEW YORK 10017
www.jeffreylichtman.com

JEFFREY LICHTMAN
JEFFREY EINHORN
DAVID GELFAND

PH: (212) 581-1001
FX: (212) 581-4999

September 29, 2022

BY ECF

Hon. Paul A. Crotty
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Tagliaferro, et al., 19 CR 472 (PAC)

Dear Judge Crotty:

A. INTRODUCTION

This letter is submitted on behalf of defendant John DeFalco in anticipation of his October 4, 2022 sentencing. With this letter, the defendant respectfully requests a non-custodial sentence, which is consistent with Probation's recommendation and is "sufficient, but not greater than necessary to comply with the purposes" set forth in 18 U.S.C. § 3553(a)(2) due, in part, to the "nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1).

The reasons for this request are as follows:

[REDACTED]

[REDACTED] *Third*, a review of Mr. DeFalco's life finds that there are many good deeds and the prospects for his rehabilitation are very good.

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 2

**B. THE DEFENDANT'S GUILTY PLEA
AND RESULTING GUIDELINES RANGE**

On October 27, 2020, Mr. DeFalco pleaded guilty pursuant to a cooperation agreement to Counts One through Seven of a seven count Superseding Information, which charged him with Conspiracy to Commit an Offense Against the United States, in violation of 18 U.S.C. § 371 (Count One); Conversion of Union Assets, in violation of 29 U.S.C. § 501(c) (Count Two); Honest Services Wire Fraud, in violation of 18 U.S.C. §§ 1343 and 1346 (Count Three); Witness Tampering, in violation of 18 U.S.C. §§ 1512(b)(1) and 2 (Count Four); Obstruction of Justice, in violation of 18 U.S.C. §§ 1512(b)(2) and 2 (Count Five); False Statements, in violation of 18 U.S.C. 1001 (Count Six); and Distribution of Oxycodone, in violation of 21 U.S.C. § 841 (Count Seven). Mr. DeFalco faces no statutory minimum and a combined maximum term of 95 years imprisonment. See Presentence Report ("PSR") at p. 26.

As recounted in the PSR, Counts One, Two and Three are grouped together because they involve the same victim and two or more acts or transactions are connected by a common criminal objective or a common scheme or plan. PSR at ¶ 48. Count Four is then added to this same group (Group One) because it embodies conduct that is treated as a specific offense characteristic in that group. PSR at ¶ 49. Counts Five, Six and Seven are grouped separately and referenced as Groups Two, Three and Four, respectively. PSR at ¶ 50. The guidelines calculation as recounted in the PSR at ¶¶ 51-83 is correctly determined as follows:

Group One: Honest Services Fraud

Base offense level for a violation of 18 U.S.C. § 1343: 12
Enhancement for accepting bribes from 494 individuals: +2
Receipt of over \$250,000 in bribes in total: +12
Managerial / supervisory role enhancement: +3
Obstruction of justice: +2

Adjusted offense level for Group One: 31

Group Two: Obstruction of Justice

Base offense level for a violation of 18 U.S.C. § 1512(b): 25

Adjusted offense level for Group Two: 25

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 3

Group Three: False Statements

Base offense level for a violation of 18 U.S.C. § 1001: 6

Adjusted total offense level for Group Three: 6

Group Four: Distribution of Oxycodone

Base offense level for distributing more than 400 kilograms,
but less than 700 kilograms of converted drug weight: 26

Safety valve reduction (U.S.S.G. § 2D1.1)(b)(18)): -2

Adjusted offense level for Group Four: 24

Multiple Count Adjustment

Group	Adjusted Offense Level	Units
1	31	1.0
2	25	.5
3	6	0
4	24	.5

Total Units: 2.0

Greatest of the adjusted offense levels: 31

Enhancement for 2.0 units: +2

Acceptance of responsibility: -3

Total offense level: 30

With a total offense level of 30 and a Criminal History Category I, Mr. Defalco's guidelines range is 97 to 121 months imprisonment. PSR at ¶ 130.

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 5

**D. THE DEFENDANT'S BACKGROUND
AND THE NATURE OF THE OFFENSE –
APPLICATION OF § 3553(a) FACTORS**

Since the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), the Sentencing Guidelines have been rendered advisory in nature, leaving sentences to the district court's discretion, guided by the Guidelines and the other factors contained within 18 U.S.C. § 3553(a) and bounded by any applicable statutory minimum and maximum. This section directs sentencing courts to "impose a sentence" that is "sufficient, but not greater than necessary, to comply with" the "need for the sentence ... to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; [and] to protect the public from further crimes of the defendant" 18 U.S.C. § 3553(a)(1)-(2) (emphasis supplied). In making this determination, courts are to consider "the nature and circumstances of the offense and the history and characteristics of the defendant" 18 U.S.C. § 3553(a)(1).

The Sentence of Salvatore Tagliaferro

Before turning to the letters praising Mr. DeFalco's positive characteristics, a review of the sentence received by his co-defendant, Salvatore Tagliaferro, is warranted and supports our request for leniency in this case. See 18 U.S.C. § 3553(a)(6); Freeman v. United States, 131 S. Ct. 2685, 2694 (2011) (Sentencing Reform Act "aims to create a comprehensive sentencing

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 6

scheme in which those who commit crimes of similar severity under similar conditions receive similar sentences”).

Specifically, Tagliaferro received a significant variance in this case – 60 months¹ imprisonment from guidelines of 97 to 121 months – despite forcing the government to a trial and maintaining his innocence even after his conviction and therefore never accepting responsibility for his crimes. See September 9, 2021 Sentencing Transcript at T 10, 30. Tagliaferro was deemed the “ringleader” of the bribery scheme by the government (Govt’s September 2, 2021 Sentencing Ltr., ECF No. 183, at p. 1) and at his sentencing, the Court concurred that he was a “substantial leader” and enhanced his guidelines by four levels for his role, as opposed to the three level enhancement assessed by Probation for DeFalco’s role. September 9, 2021 Sentencing Transcript at T 29.

Additionally, Tagliaferro had a prior federal conviction – he was convicted of Conspiracy to Transport Stolen Goods in 1997 after “he and his coconspirators stole several tractor trailers full of retail goods worth hundreds of thousands of dollars. ... and [was] sentenced to 18 months incarceration” Govt’s September 2, 2021 Sentencing Ltr. at p. 3. While the age of this conviction prevented him from being assessed criminal history points, Tagliaferro’s prior federal conviction and service of a lengthy sentence contrasts starkly with DeFalco’s own criminal history of minor arrests involving small amounts of cocaine that date back to 1989. See PSR at ¶¶ 85-90. [REDACTED]

The History and Characteristics of the Defendant

We have attached nearly 20 character letters in support of this submission, a number reflecting the significant and meaningful role that Mr. DeFalco has played in the lives of friends, family members and work colleagues. It would be impossible to include a letter from every individual of whom Mr. DeFalco has positively influenced, still, the myriad letters on which we do remark paint a consistent picture of a “loyal friend” (August 31, 2022 Letter of Sotirios Mikros, attached as Exhibit A) and “family man who cares deeply about his two daughters.” Letter of Daniel Zotollo, attached as Exhibit B. Additionally, the letters speak of a man who would “help anyone around him,” and “puts others first,” (Letter of Jordyn DeFalco, attached as

¹ Probation recommended a sentence of 60 months imprisonment for Tagliaferro. By contrast, they recommend a sentence of time-served for DeFalco based on [REDACTED] his dated criminal record, history of gainful employment, and positive adjustment to supervision over the three year period since his arrest. See PSR at pp. 26-28.

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 7

Exhibit C) and has spent a “lifetime ... helping union workers” August 31, 2022 Letter of Thomas Gearon, attached as Exhibit D. Finally, several letters observe that Mr. DeFalco has “realized his wrongs” (*id.*) and “expressed deep regret for his actions” March 30, 2022 Letter of Colleen DeFalco, attached as Exhibit E; see also Letter of Angelo Quinn, attached as Exhibit F (“embarrassed”); August 29, 2022 Letter of Dawn Tonner, attached as Exhibit G (“upset and sorry”). Sadly, were it not for this sentencing, many of Mr. DeFalco’s exceptionally good deeds probably would have gone unrecognized.

A Loving and Supportive Father and Family Member

To begin, many of the letters submitted on behalf of Mr. DeFalco referenced his dedication to his family, and in particular, his two daughters Jordyn and Gianna. See, e.g., August 26, 2022 Letter of Peter Leone, attached as Exhibit H (“wanted the best opportunit[ies] for his two daughters. ... Their success is directly attributed to the parenting of John and his wife”); August 31, 2022 Letter of David Rodriguez, attached as Exhibit I (“extremely supportive of both daughters and believes attendance at college and obtaining a degree is necessary for each ... to have a successful career in the future”).

In her letter to the Court, Jordyn DeFalco explains the significant impact that her father has had on her:

Ever since I was a child, my dad would work countless hours because ‘he never wanted his kids to do without like he did.’ That was something that has always stuck with me, that sentence that left his mouth very often was one of the reasons I never give up on my career path even when it gets tough. My sister and I never did without. I currently attend my dream school at Sacred Heart University. Without my dad, I probably would have never thought about going to SHU.

Ltr. of Jordyn DeFalco, Ex. C.

Gianna DeFalco corroborates her sister’s account of their father’s dedication to their family, writing that he “has spent the last three decades working hard to support his family to one day see us graduate in both medical and criminal justice fields. Whether me or my sister had a school event or sports competition my father was there to support and watch us accomplish our goals.” Letter of Gianna DeFalco, attached as Exhibit J. Gianna concludes “if it were not for my father I would not be studying at the top college for criminal justice in the country and I am forever grateful for his devotion to my academic excellence.” *Id.*; see also Ltr. of Dawn Tonner, Ex. G (“exceptional parent”).

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 8

Gianna and Jordyn's mother, Colleen, likewise shares in this sentiment, writing in her letter to the Court: "John has supported both our girls in their team sports and [] encourages them [to] pursue their goals in life. ... John has worked tirelessly to financially support our daughters in their education and activities." Ltr. of Colleen DeFalco, Ex. E; Letter of Bernard Joaquin, attached as Exhibit K ("loves both of his children very much"). The defendant's mother, Judith, confirms this take, writing to the Court:

Jordyn is now attending Sacred Heart University and is majoring in Physical Therapy. Gianna is attending John Jay College of Criminal Justice. They both are doing great in school with excellent grades and have gotten some scholarships. John loves his girls unconditionally and he is working so hard to put them through college. He is a great father to them.

August 29, 2022 Letter of Judith DeFalco, attached as Exhibit L; see also August 29, 2022 Letter of Dena Anna DeFalco-Joaquin, attached as Exhibit M ("involved tremendously in both his daughters' lives").

Mr. DeFalco's extended family has similarly praised his efforts. The defendant's brother-in-law, Bernard Joaquin, informs the Court that Mr. DeFalco is the godfather to his daughter and is "very much involved" in her life. Ltr. of Bernard Joaquin, Ex. K; see also Ltr. of Dena Ann DeFalco-Joaquin, Ex. M ("amazing brother, son and uncle"). The defendant's mother, Colleen, praises that he took care of her when she battled breast cancer, and further recalls that when he was younger, his grandmother suffered from multiple sclerosis and "everyday" he would pick her up and "transfer her in and out of [her] wheelchair." Ltr. of Judith DeFalco, Ex. L; see also Ltr. of Dawn Tonner, Ex. G (helps "take care of [his] 77 year old mother").

A Reliable Friend

Numerous letters submitted in support of this submission also reflect the defendant's dedication and helpfulness to friends in need. Of the defendant's efforts, friend and co-worker Sotirios Mikros hails:

John has become a dear friend to me, and a loyal one as well. John, for the past year, has gone out of his way on a daily basis to drive from his residence in New Jersey, pick me up at my home in Queens, and then drive me to the job site. At the end of the day, he drives me from the job site, to my home in Queens and then drives himself home to his residence in New Jersey due to the fact that I have Multiple-Sclerosis, and Trigeminal Neuralgia and the

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 9

possibility of an unpredictable flare-up due to the nature of both conditions leaves me unable to drive. I don't know many people that would go out of their way like this for so long. *He still continues to do so, to this day.*

Ltr. of Sotirios Mikros, Ex. A (emphasis supplied); see also Letter of Daniel Zotollo, Ex. B ("I had owned a fitness gym in which he had donated some of his time to help build and get it opened up").

Marc Rodriguez similarly informs that when he retired in 2007 due to pulmonary fibrosis, the defendant "offered to help [him] do work around [his] house," including cleaning his gutters and helping rake leaves, despite the fact that they live nearly two hours away from each other. Letter of Marc Rodriguez, attached as Exhibit N ("always concerned about how my breathing is doing"). And Robert Dykeman echos: "I have recently been diagnosed with cancer and ... near the end of chemotherapy and radiation treatments. *John has always been there for my family and [me] since the beginning. He has helped me financially and mentally, [a]lways lifting my spirits during this difficult time.*" Letter of Robert Dykeman, attached as Exhibit O (emphasis supplied).

Angelo Quinn adds of his accounts with the defendant that he "has helped [him] on many occasion do personal work on his own time free of charge ... and as a single homeowner [he] could not have done it without him." Ltr. of Angelo Quinn, Ex. F ("He is the first to offer help with anything anyone need"). Further, of a time when the defendant supported him emotionally, Mr. Quinn recalls:

I am a Sergeant with the Belleville Police Department in NJ. We are a very busy town and I have been in patrol on the streets for 14 years now. ... I have ... been involved in two shootings, one in which I had to take another man's life. I tell you this because a low point in my life followed after for a few years. *John DeFalco spent countless days in my living room with me talking me through the lowest points in my career and honestly my life.* I thank God every day that he was there and I can say that I owe my present quality of life and professional career to his selfless acts and kindheartedness, that IS John DeFalco.

Id. (emphasis supplied); see also August 26, 2022 Letter of Paul Gioe, attached as Exhibit P ("good friend"). David Rodriguez offers similar high praise, writing:

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 10

[O]ver the years I have met a lot of people in all parts of the world. John Defalco has always been there for me as a life-long friend. He has always been there to assist me or to simply give me a hand or provide comfort to me when I personally needed a friend. As a result of this life long relationship which I have been fortunate enough to share with John Defalco, I will always acknowledge him in a very positive way.

Ltr. of David Rodriguez, Ex. I.

A Hard Worker

Despite Mr. DeFalco's crimes being related to his employment with the Carpenter's and Joiner's Union, he has also done much good for his fellow union members and other colleagues – and he has a lifelong track record of hard work. See, e.g., September 24, 2022 Letter of Joseph Lauer, Jr., attached as Exhibit Q (“I had a great working experience with John[,] he took pride in his work and the companies that he worked for and ran work for within the Union”); Ltr. of Daniel Zotollo, Ex. B (“hard worker that was never late”).

For example, attorney Thomas Gearon informs: “My experience with John and conversations with many union members he helped demonstrated to me that he always took seriously the needs of members and their families. ... He helped countless men and women get good paying union jobs ... allow[ing] those members to feed and educate their families with dignity.” Ltr. of Thomas Gearon, Ex. D. And of his experiences with the defendant at the Local 157, George LaMontagne adds:

John and I met through our involvement in Local 157 monthly meetings and union events. My experience with John on a professional level was always positive. John was a strong mentor to younger carpenter apprentices and a loyal friend to seasoned union members. John was always the first to offer advice and lend a helping hand to any member in need of work or guidance. Often on job sites the young apprentices do not get the training they need from seasoned veterans and instead are relegated to sweep and get coffee. John took the time to teach new members the skills they needed to succeed in this business. Large construction sites can be intimidating to new members and I will be forever grateful to John for teaching my son Kevin when he was working with John.

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 11

August 29, 2022 Letter of George LaMontagne, attached as Exhibit R.

Colleagues at Dolphin construction, which has employed Mr. DeFalco since 2019, likewise laud the defendant's work ethic. Edward Tathan, the owner of the company, writes:

Since his arrival to the company in August of 2019, John has always been a reliable, and able body employee, with an excellent work ethic. He is typically on site prior to the commencement of the work day. I have never received a bad report or know of any negative issues caused by Mr. DeFalco. I have received numerous compliments from my clients as to how courteous and well mannered he is in the presence of our clients. We have received nothing but good feed back from our Job Superintendent about the quality of his work.

During the riots in New York City in 2020, Dolphin Construction was called upon to perform Emergency board-ups for our clients inclusive of Financial Institutions and high-profile retail outlets. Mr. DeFalco immediately made himself available and worked around the clock for many days. He would only go home to rest, but return a few hours later to continue the emergency work.

Mr. DeFalco demonstrated leadership skills and compassion for his co-workers as he had taken some of our younger workers under his wing who were nervous and overwhelmed about the rioters as they were jumping up and down on our vehicles and threatening actions of harm to the men. Mr. DeFalco helped them to calm down and kept them focused on their work to complete their tasks and get them through a tough time.

August 31, 2022 Letter of Edward Tathan, attached as Exhibit S; see also Ltr. of Paul Gioe, Ex. P ("dependable, responsible and very professional on a business level").

Fellow Dolphin Construction employee Sotirios Mikros, who has worked "side-by-side [with him] for the past three years," confirms this take, adding: "he has earned my respect as a journeyman carpenter as he has become my right-hand man. We have worked together on multiple projects and John has always proven himself to be knowledgeable, responsible, dependable and respectful." Ltr. of Sotirios Mikros, Ex. A; see also Ltr. of Judith DeFalco, Ex. L ("Even when he is sick he never misses a day of work").

JEFFREY LICHTMAN

Hon. Paul A. Crotty
United States District Judge
September 29, 2022
Page 12

Finally, regarding his experiences with the defendant, client and friend Peter Leone writes:

John has performed several major home renovations for me and several of my friends and family. John ran the projects with respect of the house and the family, and his “crew” respected him. John treated his workers far better than industry norms. These were exclusively foreign-born workers who ... adored John. *One loyal worker was from Algeria, John treated him like family providing steady employment and when needed [it], a place to live.*

Ltr. of Peter Leone, Ex. H (emphasis supplied); see also Ltr. of Dawn Tonner, Ex. G (“shows up earlier than expected, works extremely hard”); Ltr. of Dena Ann Defalco-Joaquin, Ex. M (“rarely misses a date of work”).

E. CONCLUSION

Defendant John DeFalco comes before this Court asking for mercy. A life filled with good deeds and hard work has been marred by his criminal actions. Nevertheless, as the powerful enclosed letters reveal, Mr. DeFalco is an uncommonly decent and giving man, and unlike many defendants, has made very sincere efforts to help family and friends throughout his life. He is the rare defendant who has given so much to others when no one was watching, when he had no need to impress a judge deciding his fate. For these reasons and the others stated herein, a probationary sentence is respectfully requested.

Respectfully submitted,



Jeffrey Lichtman
Jeffrey Einhorn

cc: Thomas McKay, Esq
Assistant United States Attorney (by ECF)